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OFFICE OF PETITIONS

In re Application of
Ward Mullins, et al.
Application No. 10/046,894
Filed: January 17, 2002
Attorney Docket No. 0036-023

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 3, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed April 7, 2005, which set a shortened statutory period for reply of three (3) months. A two-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. An Advisory action was mailed September 2, 2005 indicating that the reply filed on August 8, 2005, failed to place the application in condition for allowance. Accordingly, the application became abandoned on September 8, 2005.

Petitioner has filed a continued prosecution application (CPA). As the result of amendments to 37 CFR 1.53(d)(1), a CPA may no longer be filed as part of a non-provisional application unless the application was filed prior to May 29, 2000.¹

As stated in the Final Rules Package issued August 16, 2000,

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a Request for Continued Examination (RCE) or the prior application (identified in the request for CPA) under new § 1.114 (unless the application has issued as a patent).²

¹ See *Changes to Application Examination and Provisional Application Practice*, final rule: 65 Fed. Reg. 50092 (August 16, 2000), 1238 Off. Gaz. Pat. Office 13 (September 5, 2000); interim rule: 65 Fed. Reg. 14865, 14872 (March 20, 2000), 1233 Off. Gaz. Pat. Office 47, 52 (April 11, 2000).

² See *Changes to Application Examination and Provisional Application Practice*, final rule: 65 Fed. Reg. at 50093.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, the \$285 extension of time submitted with the petition on November 3, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded by treasury check in due course.

The unentered amendment filed August 8, 2005 will be considered the submission required under 37 CFR 1.114.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment (filed August 8, 2005) and a Continued Prosecution Application (CPA) treated as a Request for Continued Examination (RCE); (2) the petition fee of \$750; and (3) the required statement of unintentional delay have been received. Accordingly, the petition filed November 3, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter is being forwarded to Technology Center 2100, Art Unit 2161 for processing the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.



Retta Williams
Petitions Examiner
Office of Petitions